

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

THELMA FELIPE,

Plaintiff,

-against-

TARGET CORPORATION and  
KINGSBRIDGE ASSOCIATES, LLC.,

Defendants.

-----X

**NOTICE OF MOTION FOR  
REMAND**

Docket.: 08 CV 4317

Judges Assigned:  
Holwell, J.  
Pitman, M.

Upon the affirmation of Michael J. Asta, sworn to on May 15, 2008, the Plaintiff, Thelma Felipe, will move this court at the United States Courthouse, Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312 on the 25th day of June 2008, at 9:30 a.m. for an order:

- a) Remanding this matter to The Supreme Court of the State of New York, County of Bronx, pursuant to 28 U.S.C. 1332;
- b) for such other and further relief as this court deems just and proper.

Dated: New York, New York  
May 22, 2008

*s/ Michael Asta*

---

MICHAEL J. ASTA (MJA 1035)  
LAW OFFICES OF MICHAEL J. ASTA  
Attorneys for Defendants Roman and DeJesus  
450 SEVENTH AVE., SUITE 2205  
NEW YORK, N.Y. 10001  
(212) 244-6555

TO: SAL F. DELUCA, ESQ.  
SIMMONS, JANNACE & STAGG, LLP  
75 JACKSON AVENUE  
SYOSSET, NY 11791

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

THELMA FELIPE,

Plaintiff,

-against-

TARGET CORPORATION and  
KINGSBRIDGE ASSOCIATES, LLC.,

Defendants.

-----X

**AFFIRMATION IN SUPPORT  
OF MOTION FOR REMAND**

Docket.: 08 CV 4317

Judges Assigned:  
Holwell, J.  
Pitman, M.

MICHAEL J. ASTA, an attorney duly licensed to practice before the courts of this state,  
hereby affirms the following to be true under penalties of perjury.

1. I am counsel for the Plaintiff, Thelma Felipe (hereinafter, "Plaintiff Felipe")  
herein, and as such am fully familiar with the facts and circumstances of this action.

2. This affirmation is submitted in support of Plaintiff Felipe's motion for Remand  
pursuant to 28 U.S.C. 1332.

3. This action arises due to the negligence of Defendant Target Corporation  
(hereinafter, "Defendant Target") and Defendant Kingsbridge Associates, LLC (hereinafter,  
"Defendant Kingsbridge") on September 9, 2007 at the premises known as 40 West 225<sup>th</sup> Street,  
#50, Bronx, New York. At that time, Plaintiff Felipe was caused to fall inside the premises due  
to the dangerous and defective condition therein. Upon information and belief, Defendant Target  
operated a business and Defendant Kingsbridge owned the premises.

4. As a result of her accident, Plaintiff Felipe suffered personal injuries. In her  
Bronx County Supreme Court Complaint (Exhibit "A"), Plaintiff seeks damages "in a sum of  
money having a present value that exceeds the jurisdictional value of the lower courts which  
would otherwise have jurisdiction in the matter." Plaintiff did not plead a specific sum regarding

her claimed damages.

5. Plaintiff Felipe commenced an action for personal injuries against Defendants in the Supreme Court of the State of New York, County of Bronx on March 21, 2008. This matter was noticed for removal by Defendant Target pursuant to 28 U.S.C. section 1441 and Defendant Target claims that this Honorable Court has jurisdiction pursuant to 28 U.S.C. section 1332.

6. Also named as a Defendant is Kingsbridge Associates, LLC (hereinafter, "Defendant Kingsbridge"), the owner of the premises (Exhibit "B"). Defendant, Kingsbridge's principal place of business is located at 99 Powerhouse Road, Roslyn Heights, New York (Exhibit "C"). It is a corporate citizen of the State of New York.

7. Based upon the facts of Plaintiff Felipe's claim and the status of Defendants Target's and Defendant Kingsbridge's corporate citizenship in New York State and the lack of evidence as to the value of her claim, Plaintiff Felipe submits that this matter should be remanded to the Supreme Court of New York, County of Bronx.

8. Plaintiff Felipe is a citizen of the State of New York and was so on March 21, 2008.

9. Contrary to Defendant Target's *Notice of Removal*, there is no evidence to suggest that Defendant Target's principal place of business is Minnesota as alleged.

10. Upon information and belief and based upon information obtained from Defendant Target's website, Defendant Target is and was, at the time of Plaintiff's accident, a Minnesota Corporation.

11. Target's first store opened in Roseville, Minnesota, in 1962. Today, Target operates approximately 1,500 stores in 47 states, including more than 175 SuperTarget stores that include an in-store bakery, deli, meat and produce sections.

12. Currently, there are 59 Target stores operating in the State of New York as well as a

distribution center. In 2007, Defendant Target employed 366,000 employees in its stores across the United States. The overwhelming majority of its employees work in its retail stores and distribution centers. The number of store employees vastly out number the Minnesota headquarters personnel.

13. For the reasons set forth herein along with the memorandum of law submitted in support of Plaintiff Felipe's current application, it is respectfully submitted that this matter should be remanded to the Supreme Court of the State of New York, County of Bronx due to lack of jurisdiction pursuant to 28 U.S.C. 1332.

Dated: May 22, 2008  
New York, N.Y.

*s/ Michael Asta*

-----  
MICHAEL J. ASTA (MJA 1035)

LAW OFFICES OF MICHAEL J. ASTA  
Attorneys for Defendants Roman and DeJesus  
450 SEVENTH AVE., SUITE 2205  
NEW YORK, N.Y. 10123  
(212) 244-6555

**“A”**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

**THELMA FELIPE,**

**Plaintiff,**

**-against-**

TARGET CORPORATION and KINGSBRIDGE ASSOCIATES, LLC.,

**Defendant.**

**To the above named Defendant(s):**

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

**Dated: New York, NY**  
**March 19, 2008**

**MICHAEL J. ASTA**

**LAW OFFICES OF MICHAEL J. ASTA**  
450 Seventh Avenue, Suite 2205  
New York, NY 10123  
(212) 244-6555

TO: Target Corporation  
1000 Nicollet Mall TPN -12E  
Minneapolis MN 55403

**Kingsbridge Associates, LLC**  
c/o Roy P. Kozupsky & Associates, LLP  
Attn: William P. Walzer, Esq.  
10 E. 40<sup>th</sup> Street Suite 1710  
New York, NY 10016

**Index No:**

302329/08

## SUMMONS

The plaintiff has chosen  
BRONX COUNTY  
as the place of trial

The basis of venue is Defendant's residence

RECEIVED  
MAR 21 AM 9:13  
COUNTY CLERK  
COLUMBIA COUNTY  
BROOKLYN

REC'D 4/2/08 2:00

4/7/88 Bullseye 2:00

Sedgwick Sue Carlson

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

Index No:

-----X

THELMA FELIPE,

Plaintiff,

**VERIFIED COMPLAINT**

-against-

TARGET CORPORATION and KINGSBRIDGE  
ASSOCIATES, LLC.,

Defendant.

-----X

Plaintiff, by her attorney, MICHAEL J. ASTA, ESQ., complaining of the defendant, states on information and belief:

1. That at all time hereinafter mentioned Plaintiff was and is a resident of the County of Bronx, City and State of New York.
2. That at all times hereinafter mentioned defendant, TARGET CORPORATION, INC. (TARGET) was and still is a foreign corporation authorized to do business in the State of New York.
3. That at all times hereinafter mentioned defendant, TARGET was and still is a domestic corporation duly existing under and by virtue of the laws of the State of New York.
5. That at all times hereinafter mentioned defendant, KINGSBRIDGE was and still is a domestic corporation duly existing under and by virtue of the laws of the State of New York.
6. That at all times hereinafter mentioned the defendant, TARGET conducted business within the City and State of New York with a place of business in the County of Bronx, State of New York.

7. That at all times hereinafter mentioned the defendant, KINGSBRIDGE conducted business within the City and State of New York with a place of business in the County of Bronx, State of New York.
8. That at all times hereinafter mentioned defendant KINGSBRIDGE is a resident of the State of New York with a principal place of business at 99 Powerhouse Rd., Roslyn Heights, N.Y.
8. That at all time hereinafter mentioned KINGSBRIDGE owned the premises known as 40 W 225<sup>th</sup> Street # 50, County of Bronx, City and State of New York.
9. That at all time hereinafter mentioned KINGSBRIDGE managed the premises known as 40 W 225<sup>th</sup> Street, County of Bronx, State of New York.
10. That at all time hereinafter mentioned it was the duty of defendant, KINGSBRIDGE to inspect the premises to ensure the premises was kept in a safe condition, free from hazards and dangerous conditions.
11. That at all time hereinafter mentioned defendant TARGET operated a store at the premises known as 40 W 225<sup>th</sup> Street # 50, County of Bronx, City and State of New York.
12. That at all time hereinafter mentioned defendant TARGET maintained the store on the premises known as 40 W 225<sup>th</sup> Street # 50, County of Bronx, City and State of New York.
13. That at all time hereinafter mentioned defendant TARGET controlled the store on the premises known as 40 W 225<sup>th</sup> Street # 50, County of Bronx, City and State of New York..
14. That at all time hereinafter mentioned defendant TARGET managed the store on the premises known as 40 W 225<sup>th</sup> Street # 50, County of Bronx, City and State of New York..
15. That at all time hereinafter mentioned it was the duty of defendant TARGET to inspect the store on the premises to ensure the premises was kept in a safe condition, free from hazards and dangerous conditions.

16. That at all times hereinafter mentioned, it was the duty of defendant TARGET to keep the store on the premises in a safe condition, free from hazards and dangerous conditions.
17. That at all times hereinafter mentioned, it was the duty of defendant TARGET to maintain the store on the premises in a safe condition, free from hazards and dangerous conditions.
18. That at all times hereinafter mentioned, it was the duty of defendant TARGET to manage the store on the premises to ensure the premises was kept in a safe condition, free from hazards and dangerous conditions.
19. That at all times hereinafter mentioned, it was the duty of defendant TARGET to supervise the store on the premises to ensure the premises was kept in a safe condition, free from hazards and dangerous conditions.
20. On or about September 9, 2007, the plaintiff was lawfully present at the aforementioned location.
21. On or about September 9, 2007, the plaintiff was an invitee at the aforementioned location.
22. On or about September 9, 2007, while at the aforementioned location the plaintiff was caused to slip and fall.
23. The defendants, their agents, servants, or employees were negligent, careless, and reckless in the ownership, operation, management, maintenance, and control of the aforementioned store and premises.
24. The defendants, their agents, servants, or employees created an unreasonably dangerous condition at the aforementioned premises.
25. The defendants their agents, servants, or employees, allowed an unreasonably dangerous condition to exist at the aforementioned premises.

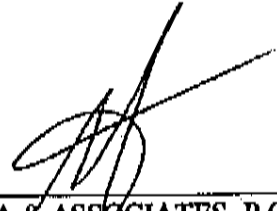
26. The defendant their agents, servants, or employees had observed or should have observed that the premises was in a dangerous and hazardous condition.
27. The defendants their agents, servants, or employees, had actual or constructive notice of the above-mentioned unreasonably dangerous condition.
28. That on or about September 9, 2007 and for a considerable period of time prior thereto, the defendants, their agents, servants and/or employees had negligently, recklessly and carelessly caused, allowed and permitted the said premises to be, become and remain in a dangerous and defective condition for an unreasonably long and continuing period of time, thereby exposing guests and others lawfully on the said premises to an unreasonable risk of harm and the defendant, its agents, servants and/or employees, were otherwise reckless and careless in the premises.
29. That on September 9, 2007, while the plaintiff was lawfully and properly at the defendant's premises he was caused to fall because of slick, slippery, defective, poorly lit, dangerous and/or otherwise hazardous condition on the premises known and described as the Target Store located at 40 W 225<sup>th</sup> Street, Bronx, NY 10463, wherein and whereby the plaintiff was caused to sustain serious and severe personal injuries.
30. The acts and/or omissions of negligence committed by the defendant, its agents, servants and/or employees consisted of failing to properly and adequately maintain the said premises and its surface, in failing to post warning signs, barricades, and otherwise warning the plaintiff of the dangerous and hazardous condition; in failing to keep the premises free from defective and hazardous conditions which they knew or should have known constituted a danger and hazard to persons lawfully within the aforementioned premises; in failing to have sufficient inspections, repairs and maintenance done to the aforementioned premises; in

violating building department and administrative regulations; in improperly maintaining, cleaning and repairing the subject premises; in failing to use due care and caution in the premises; in being otherwise careless and negligent.

31. That by reason of the foregoing, plaintiff has been injured and suffered damages in a sum of money having a present value that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter, along with fees, costs, and expenses.

Wherefore, the plaintiff demands judgment against the defendant in an amount that will fairly and adequately compensate her for the injuries she has suffered, an amount that will exceed the jurisdiction of the lower courts, and for such other and further relief as is deemed just and proper.

Dated: New York, NY  
March 19, 2008



---

ASTA & ASSOCIATES, P.C.  
450 Seventh Avenue, Suite 2205  
New York, NY 10123  
(212) 244-6555

Verification

STATE OF NEW YORK)


) ss:

COUNTY OF NEW YORK)

Michael J. Asta an attorney duly admitted to practice law in the Courts of this State affirms the truth of the following under penalty of perjury and pursuant to Rule 2106 of the CPLR: I am the attorney of record for the plaintiff herein. I have read the annexed Summons and Verified Complaint, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, as to those matters I believe them to be true. My knowledge is based upon conversations with the plaintiff and upon records on file in our office.

The reason I make this verification instead of plaintiff, is because said plaintiff is not within the County where my firm maintains its office.

Dated: March 12, 2008  
New York, NY

  
\_\_\_\_\_  
Michael J. Asta

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

THELMA FELIPE,

Plaintiff,

-against-

TARGET CORPORATION and KINGSBRIDGE  
ASSOCIATES, LLC.,

Defendant,

SUMMONS AND VERIFIED COMPLAINT

LAW OFFICES OF  
MICHAEL J. ASTA

Attorney for

PLAINTIFF

450 SEVENTH AVENUE

SUITE 2205

NEW YORK, N.Y. 10123

TEL: (212) 244-6555

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.11-a.

Dated: .....

Signature .....

Print Signor's Name .....

Service of a copy of the within

is hereby admitted.

Dated: .....

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

☐

NOTICE OF  
ENTRY

that the within is a (certified) true copy of a  
entered in the office of the clerk of the within-named Court on

20

☐

NOTICE OF  
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the  
Hon. \_\_\_\_\_, one of the judges of the within-named Court,  
at \_\_\_\_\_  
on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ M.

Dated: .....

Attorney for

LAW OFFICES OF  
MICHAEL J. ASTA

To:

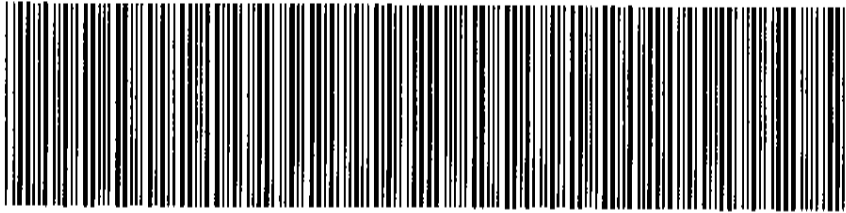
450 SEVENTH AVENUE  
SUITE 2205  
NEW YORK, N.Y. 10123

Attorney(s) for

**“B”**

**NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER**

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.


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FIRST AMERICAN NEW YORK OFFICE  
633 THIRD AVENUE  
NEW YORK, NY 10017  
212-922-9700  
300835479NYPNYREC-CQR

**RETURN TO:**

PROSKAUER ROSE LLP  
1585 BROADWAY  
NEW YORK, NY 10036  
ATTN: RONALD D. SERNAU, ESQ.

**PROPERTY DATA**

Borough	Block	Lot	Unit	Address
MANHATTAN	2215	654	Entire Lot	68 WEST 225 STREET

**Property Type: VACANT LAND**

Borough	Block	Lot	Unit	Address
MANHATTAN	2215	657	Entire Lot	90 WEST 225 STREET

**Property Type: VACANT LAND**

x Additional Properties on Continuation Page

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or Document ID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**
**GRANTOR/SELLER:**

TARGET CORPORATION  
1000 NICOLLET MALL TPN-12E  
MINNEAPOLIS, MN 55403

**GRANTEE/BUYER:**

KINGSBRIDGE ASSOCIATES, LLC  
99 POWERHOUSE ROAD, SUITE 102  
ROSLYN HEIGHTS, NY 11577

**FEES AND TAXES**

<b>Mortgage</b>			Recording Fee: \$	99.00
Mortgage Amount:	\$	0.00	Affidavit Fee: \$	0.00
Taxable Mortgage Amount:	\$	0.00	NYC Real Property Transfer Tax Filing Fee:	
Exemption:			\$	50.00
<b>TAXES: County (Basic):</b>	\$	0.00	NYS Real Estate Transfer Tax:	
City (Additional):	\$	0.00	\$	0.00
Spec (Additional):	\$	0.00		
TASE:	\$	0.00		
MTA:	\$	0.00		
NYCTA:	\$	0.00		
Additional MRT:	\$	0.00		
<b>TOTAL:</b>	\$	0.00		

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CITY OF NEW YORK**

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City Register File No.(CRFN):

**2004000428488**


*Rochelle Patricia*  
City Register Official Signature

“C”

# NYS Department of State

## Division of Corporations

### Entity Information

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Selected Entity Name: KINGSBRIDGE ASSOCIATES, LLC

#### Selected Entity Status Information

**Current Entity Name:** KINGSBRIDGE ASSOCIATES, LLC  
**Initial DOS Filing Date:** APRIL 09, 1999  
**County:** NEW YORK  
**Jurisdiction:** NEW YORK  
**Entity Type:** DOMESTIC LIMITED LIABILITY COMPANY  
**Current Entity Status:** ACTIVE

#### Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**  
C/O ROY P. KOZUPSKY & ASSOCIATES, LLP  
ATTN: WILLIAM P. WALZER, ESQ.  
10 E. 40TH STREET, STE. 1710  
NEW YORK, NEW YORK, 10016

#### Registered Agent

NONE

NOTE: New York State does not issue organizational identification numbers.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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THELMA FELIPE,

Plaintiff,

-against-

TARGET CORPORATION and  
KINGSBRIDGE ASSOCIATES, LLC.,

Defendants.

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Docket.: 08 CV 4317

Judges Assigned:  
Holwell, J.  
Pitman, M.

**MEMORANDUM OF LAW IN SUPPORT OF**  
**PLAINTIFF, THELMA FELIPE'S, MOTION FOR REMAND**

LAW OFFICES OF MICHAEL J. ASTA  
450 SEVENTH AVE., SUITE 2205  
NEW YORK, N.Y. 10123  
(212) 244-6555

## **PRELIMINARY STATEMENT**

This memorandum of law is submitted in support of Plaintiff, Donna Felipe's, Motion to Remand pursuant to 28 U.S.C. 1332.

## **FACTS**

This action arises due to the negligence of Defendant Target Corporation (hereinafter, "Defendant Target") while operating a department known as "Target" on September 9, 2007 at the premises known as 40 West 225<sup>th</sup> Street, #50, Bronx, New York (hereinafter "the Premises"). At that time, Defendant Kingsbridge Associates, LLC. (hereinafter, "Defendant Kingsbridge") was the owner of the premises (Exhibit "A" of Plaintiff's Attorney's Affirmation). Defendant Kingsbridge has its place of business located at 99 Powerhouse Road, Roslyn Heights, New York and is a corporate citizen of New York (Exhibit "B" of Plaintiff's Attorney's Affirmation). On September 9, 2007, Plaintiff was caused to fall within the Premises due to the negligence of the Defendants. As a result of her accident, Plaintiff Felipe suffered personal injuries.

## **PROCEDURAL HISTORY**

An action for personal injuries was commenced against Defendant Target and Defendant Kingsbridge in the Supreme Court of the State of New York, County of Bronx on March 21, 2008 (Exhibit "A" of Plaintiff's Attorney's Affirmation). This matter was noticed for removal by Defendant Target pursuant to 28 U.S.C. section 1441(a). Defendant Target claims that this Honorable Court has jurisdiction pursuant to 28 U.S.C. section 1332.

### **I. Standard for Remand.**

“Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute.” Kokkonen v. GuardianLife Ins. Co. of Am., 511 U.S. 375, 377 (1994). For removal to be proper, the court must have subject-matter jurisdiction in the case. “Only state court actions that originally could have been filed in federal court may be removed to federal court by the defendant.” Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). The existence of jurisdiction must be supported by a preponderance of the evidence. Altimore v. Mount Mercy College, 420 F.3d 763, 768 (8th Cir. 2005). In addition, the removal statute must be strictly construed against removal, and any doubts should be resolved in favor of remand. *See* Burns v. Windsor Ins. Co., 31 F.3d 1092, 1095 (11th Cir. 1994). The defendant bears the burden of establishing subject-matter jurisdiction. *See* Wilson v. Republic Iron & Steel Co., 257 U.S. 92, 97 (1921).

## **II. Discussion.**

### **This Court Lacks Diversity Jurisdiction over the Parties**

#### **Pursuant to 28 U.S.C. § 1332**

In deciding whether diversity jurisdiction exists pursuant to 28 U.S.C. § 1332, a court must determine whether the parties are completely diverse and whether the amount in controversy exceeds \$75,000. It is well-established that complete diversity exists when no defendant holds citizenship in a state where any plaintiff holds citizenship at the time of the lawsuit’s filing. Capitol Indem. Corp. v. Russellville Steel Co., Inc., 367 F.3d 831, 835 (8<sup>th</sup> Cir. 2003), 28 U.S.C. § 1332(c)(1). In recognition of the federalism concerns identified above, subject matter jurisdiction under § 1332(a)(2) has been interpreted to require *complete diversity*, such that the citizenship of each plaintiff must be different

from that of each defendant. Caterpillar Inc. v. Lewis, 519 U.S. 61, 75-78 (1996). For diversity purposes, a corporation is "deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business."

When determining a corporation's principal place of business, a court should look to the "total activity of the company" or the "totality of the circumstances," considering "the character of the corporation, its purposes, the kind of business in which it is engaged, and the *situs* of its operations." Amoco Rocmount Co. v. Anschutz Corp., 7 F.3d 909, 915 & n.2 (10th Cir. 1993).

In the instant case, Plaintiff Felipe is a citizen of the State of New York and was so on March 21, 2008. Defendant Kingsbridge is also a corporate citizen of the State of New York. For that reason alone, there is a lack of diversity between Plaintiff and the Defendants. In its *Notice of Removal*, Defendant Target alleges that Plaintiff has sued Defendant Kingsbridge solely as an attempt to destroy diversity between Defendant Target and Plaintiff. Defendant Target's position lacks merit. Federal Courts have long held a landlord may have a duty to a plaintiff in cases similar to the one at bar. In Ciminelli v. Kohl's Department Stores, Inc., 2005 WL 3388607 (E.D.N.Y. 2005), the Court held as follows:

Liability for a dangerous condition on property is predicated upon ownership, occupancy, control, or special use of the property. Rodriguez v. American Restaurant Ventures, Inc., 923 F.Supp. 598, 601 (S.D.N.Y.1996) (citing Millman v. Citibank, N.A., 627 N.Y.S.2d 451, 452 (N.Y.App.Div.1995)). Additionally, an out-of-possession landlord may be held liable for injuries sustained on his premises if it is contractually obligated to perform

maintenance and repairs. Seney v. Kee Assoc., 15 A.D.3d 383, 384, 790 N.Y.S.2d 170 (N.Y.App. Div.2d Dep't 2005).

Here, both Kohl's, as the tenant of the property, and Shirley Drive-In, as the landlord who is contractually obligated to perform certain maintenance and repairs, have a duty of care to members of the public who enter the store. Rodriguez, 923 F.Supp. at 601; Seney, 15 A.D.3d at 384. Id.

While Plaintiff Felipe bears the burden of proof as to whether Defendant Kingsbridge owed Plaintiff a duty *vis-à-vis* the nature and extent of Defendant Kingsbridge's ownership, occupancy, control, contractual obligation and/or special use of the Premises, she must be permitted to establish her claim through discovery. The lack of diversity herein is not negated simply because Defendant Target questions Plaintiff Felipe's motives. Based on Ciminelli, Plaintiff Felipe properly sued Defendant Kingsbridge and, therefore, no diversity exists in this matter.

Notwithstanding the lack of diversity between Plaintiff Felipe and Defendant Kingsbridge, it is the position of the Plaintiff that Defendant Target is also a corporate citizen of the State of New York. In its *Notice of Removal* Defendant Target asserts that it is a Minnesota corporation with its principal place of business in Minnesota. Upon information and belief based upon information obtained from Defendant Target's website, Target's first store opened in Roseville, Minnesota, in 1962. Today, Target operates approximately 1,500 stores in 47 states, including more than 175 SuperTarget stores that include an in-store bakery, deli, meat and produce sections.

Currently, there are 59 Target stores operating in the State of New York as well as a distribution center in Amsterdam, New York. Each New York Target store employs

hundreds of employees. In 2007, Target employed 366,000 employees in its stores across the country. It is clear that the overwhelming majority of Defendant Target's employees work in its retail stores and distribution centers. The number of store employees vastly out number the employees in its Minnesota headquarters.

Based on the Court of Appeals' opinion in the case of R.G. Barry Corporation v. Mushroom Makers, Inc., 612 F.2d 651 (2d Cir. 1979), Defendant Target would well be considered a citizen of New York. In that case, appeal was taken from a judgment of the United States District Court for the Southern District of New York, denying plaintiff's motion to remand an action for trademark dilution under New York law to state court and dismissing plaintiff's complaint. Judge Kaufman of the Court of Appeals held, *inter alia*, that: although plaintiff corporation's overall policies were set in Mississippi and much of its administrative and manufacturing requirements were contracted out to Mississippi firms, corporation was a citizen of New York for purposes of diversity jurisdiction where New York was the community in which it engaged in its most extensive contact with public and was the state in which the corporation maintained its only office and employed its sole full-time employee.

In making its determination, Judge Kauffman cited Inland Rubber Corp. v. Triple A Tire Service, Inc., 220 F.Supp. 490 (S.D.N.Y. 1963), which held as follows:

When...corporate operations are centralized, courts have tended to deemphasize the concentration on the corporate "nerve center" and to focus instead upon the state in which a corporation has its most extensive contacts with, or greatest impact on, the general public. For example, in

Inland Rubber Corp. v. Triple A Tire Service, Inc., 220 F.Supp. 490 (S.D.N.Y. 1963), a corporation chartered and headquartered in Ohio was found also to be a citizen of New York, because...most of its employees and two-thirds of its sales were centered in New York. Id.

The R.G. Barry Court also relied on Scot Typewriter Co. v. Underwood Corp., 170 F.Supp. 862, 865 (S.D.N.Y. 1959) in forming its decision. In Scot, the defendant sought to remove an action brought in a New York State court on the ground that it was a citizen of Connecticut. Judge Weinfeld held that even though Underwood had its largest production plant, greatest number of employees and principal assets in Connecticut, it was just as much of a seller as a manufacturer of typewriters. Underwood's greatest volume of sales occurred in California and New York. R.G. Barry Corporation v. Mushroom Makers, Inc., 612 F.2d 651 (2d Cir. 1979), *citing* Scot Typewriter Co. v. Underwood Corp., 170 F.Supp. 862, 865 (S.D.N.Y. 1959).

Ultimately, The R.G. Barry case and Plaintiff Felipe's case have marked similarities. Judge Kaufman's reasoning, applied to the instant action, would support a remand. He held:

Although the company's overall policies may be set in Mississippi and much of its administrative and manufacturing requirements contracted out to Mississippi firms, New York is the community in which Mushroom Makers engages in its most extensive contact with the public and the jurisdiction where it is least likely to suffer from 'local prejudice.' If, indeed, the 'local prejudice' concept is not a relic of the past. Id. *emphasis added*

Defendant Target owns 59 stores in New York that employ thousands of workers. Each store has management staff in New York. The actual contact that Defendant Target has with the public is through its stores. It is unknown whether any of the employees in Defendant Target's Minnesota office have any contact with the public at all. Judge Kaufman also touched upon the increasingly antiquated notion of "local prejudice." Certainly, in New York City, where most of its citizens are non-natives and its businesses are of a national or international origin, it is hard to conceive that a Target store would be the victim of "local prejudice."

The second issue of relevance to Plaintiff Felipe's application is whether her claim exceeds the jurisdictional amount of \$75,000. Pursuant to 28 U.S.C. § 1447, the party opposing the motion bears the burden of showing, by a preponderance of the evidence, and with competent proof, that the claim in question is in excess of the jurisdictional amount (\$75,000). United Food & Commercial Workers Union v. CenterMark Prop., 30 F.3d 298, 304-305 (2d Cir.1994) [citation omitted]; R.G. Barry Corp. v. Mushroom Makers, Inc., 612 F.2d 651, 655 (2d Cir.1979) [citations omitted].

The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint. Caterpillar Inc. v. Williams, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987). ("[The defendant] has the burden [on the plaintiff's motion to remand] of proving that it appears to a reasonable probability that the [plaintiff's] claim is in excess of the statutory jurisdictional amount.... To determine whether that burden has been met, we look first to

the plaintiffs' complaint and then to [the defendant's] petition for removal.”).

Mehlenbacher v. Akzo Nobel Salt, Inc., 216 F.3d 291, 296 (2d Cir.2000).

Attached to Defendant Target’s *Notice of Removal* is Plaintiff Felipe’s Complaint. In her Complaint, Plaintiff Felipe has alleged that she has suffered personal injuries and is seeking a sum of money having a present value which “exceeds the limits of all lower courts.” Plaintiff Felipe has not pleaded any specific sum with regard to her damages claimed or a specific injury. Moreover, Defendant Target’s *Notice of Removal* is merely conclusory and does not offer any basis to suggest the nature of the dollar value of Plaintiff Felipe’s claim. Consequently, based on Caterpillar, Defendant Target cannot bear its burden of demonstrating by a preponderance of evidence that Plaintiff Felipe’s claim exceeds the jurisdictional amount of \$75, 000.00.

### **CONCLUSION**

As set forth above, Defendant Target has failed to meet its burden, by a preponderance of the evidence, that there is diversity between the Plaintiff and all Defendants herein. Nor has Defendant Target established that value of Plaintiff Felipe’s claim is in excess of \$75,000. In viewing the totality of the factors involved with the corporate citizenry of Defendant Kingsbridge and Defendant Target’s extensive contacts with the State of New York and the lack of evidence as to the value of Plaintiff Felipe’s claim, it is respectfully submitted that this matter should properly be remanded to the Supreme Court of New York, County of Bronx along with such other and further relief as this court deems just and proper.

Dated: May 22, 2008  
New York, N.Y.

*s/ Michael Asta*

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